



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

July 31, 1998
AO-98-15

Evan Slavitt, Esq.
Gadsby & Hannah, LLP
225 Franklin Street
Boston, MA 02110-2811

Re: Fundraising by Massachusetts Republican Party

Dear Mr. Slavitt:

This letter is in response to your July 17, 1998 request for an advisory opinion regarding a fundraising technique under consideration by the Massachusetts Republican Party.

Question

Would the Republican State Committee's plan to solicit funds for specific races, but reserve the option to use the funds for other purposes, be consistent with the campaign finance law?

Answer

No.

Facts

The Republican State Committee would like to focus certain fundraising efforts on specific races. "For example, it would establish a campaign entitled 'GOP for the AG' or a 'Keep the Treasurer Fund.' All monies raised as part of those efforts would be intended for the specific race under consideration. Nonetheless, the monies would be deposited in the general Republican State Committee State Account. The monies would not be sequestered and the party would reserve the right to use such funds for other purposes in the discretion of the Party Chair or the Executive Committee."

You have stated that although the fundraising effort would be focused on a specific race, "the money would not be 'earmarked' because it would not be sequestered and control of the funds would remain with the Party. Further, neither the individual contributors nor the Republican candidate for that office would have any control over such funds whatsoever. In addition, you contend that this type of

fundraising effort would be consistent with the goals and objectives of a political party because the party has an ‘institutional interest’ in taking and holding statewide offices regardless of the particular candidate involved.”

Discussion

1. Relevant statutes and regulations

The campaign finance law defines “contribution” to include the giving of money to a candidate or person acting on behalf of a candidate “for the purpose of influencing the nomination or election” of the candidate. See M.G.L. c. 55, § 1. During a calendar year, individuals may contribute up to \$5,000 to political committees of any political party, but may give no more than \$500 during the same period to a candidate or candidate committee. See M.G.L. c. 55, § 7A. State party committees may make monetary contributions of up to \$3,000 during a calendar year to any candidate and the committee organized on behalf of that candidate. See M.G.L. c. 55, § 6. There are no limits on in-kind contributions by party committees to candidates.

The campaign finance law generally restricts fundraising to the specific approaches contained in the statute. See M.G.L. c. 55, § 7, which states that “[n]o person or combination of persons . . . shall in connection with any nomination or election receive money or its equivalent, expend or disburse or promise to expend or disburse the same, except as authorized by this chapter.” (Emphasis added). The campaign finance law does not contain a provision allowing party committees to utilize a fundraising technique such as the one you have proposed.

The statute does not define “earmarking” but does state that “no person shall, directly or indirectly, make a campaign contribution in any name except his own nor in any manner for the purpose of disguising the true origin of the contribution.” See M.G.L. c. 55, § 10. The true origin of a contribution is “disguised” if an intermediary delivering contributions to a candidate does not advise the recipient of the true source and instead leads the recipient to believe that the contribution is from the intermediary.

Section 10A defines the responsibilities of “intermediaries or conduits” of contributions to candidates. The provision states that contributions delivered by intermediaries must be treated as coming from the original source of the funds.¹ See section 10A and 970 CMR 1.07. Intermediaries covered by the statute include PACs or their agents, legislative or executive agents or lobbying groups or their agents, or persons charged with the responsibility of delivering individual contributions from a group of officers or employees of a corporation.

Section 10A also states that “nothing in this section shall prohibit . . . a bona fide joint fund-raising effort conducted solely for the purpose of sponsorship of a fund-raising . . . event . . . by a special committee formed by one or more candidates and one or more state or local committees of a political party on their own behalf.” Candidates and a party committee conducting such a joint event must form a “special committee.” Contributions to the special committee are subject to the limitations on contributions that

¹ In circumstances defined in the statute but not relevant here, contributions may also be considered contributions from the intermediary.

apply to political action committees. Therefore, an individual making a contribution to a special committee may contribute no more than \$500. See 970 CMR 2.12(2)(d)2. Special committees are responsible for reporting the original source of all contributions to the candidate and to OCPF. See 970 CMR 2.12(3).

2. Analysis

A contribution to the Republican State Committee (RSC) made in response to a solicitation is an “earmarked” contribution to a candidate if the person making the payment intends or reasonably expects that the money will be used to support a specific candidate.

Whether a contribution solicited by an intermediary is “earmarked” for delivery to a specific candidate, i.e., should be considered a contribution to the candidate rather than the intermediary, depends on consideration of a number of factors including but not limited to the following: (1) whether a recipient of the solicitation would reasonably see it as an invitation to submit contributions to be used in connection with a specific identifiable candidate (e.g., the solicitation contains an express or implied assurance that funds will be used to support a particular candidate); (2) what the contributor does in response to the solicitation (e.g., the contributor provides a note asking that a contribution be used to support a particular candidate); and (3) what is done with the contribution by the intermediary (e.g., the intermediary sets aside a special account or intends to use the contribution for the particular candidate named in the solicitation or referenced by the contributor). A contribution would be “earmarked,” therefore, if given to a committee with the intent, expectation or condition that it will subsequently be contributed to or used to support a particular candidate or candidates, or a particular committee or committees.²

If contributors reasonably believe that a contribution will be used to support a particular candidate, the funds received should be considered a “contribution” to the candidate. The plan would frustrate the campaign finance law’s goal of accurate disclosure of contributions because recipient candidates would disclose receipts as contributions from the RSC rather than as contributions from the original source of the funds. The plan would therefore not be consistent with section 10.

The proposed fundraising plan would also allow contributors to exceed the \$500 limit on contributions to candidates. Under the proposal, individuals would be making illegal contributions of greater than \$500 to a candidate to the extent individuals give over \$500 to a candidate, including funds given to the RSC which are used by the RSC to benefit the candidate. The plan would therefore not be consistent with section 7A.

Under the circumstances you have described, the RSC is not an “intermediary” regulated by section 10A or an agent responsible for providing records to candidates under M.G.L. c. 55, § 23. Unlike the fundraising methods regulated by those sections, however, the plan would make it possible for

² This approach is generally consistent with the standard established by the Federal Election Commission, which states that “*earmarked* means a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate’s authorized committee.” See 11 CFR § 110.6(b).

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contributions to be gathered and delivered to candidates in a manner which would interfere with accurate disclosure. See M.G.L. c. 55, § 23 which states that agents of a candidate raising funds for the candidate must provide the candidate with a detailed account of the contributions received within three business days of receipt. The detailed account would include the name and address of each contributor. The

proposal described in your letter would not assure the disclosure sought by sections 10A and 23. For this as well as the other reasons discussed above, the proposal would be an unauthorized fundraising approach prohibited by section 7.

I recognize that a state party committee has a legitimate "institutional interest" in electing candidates of its party. That interest is promoted by raising funds for a slate of candidates, which would be consistent with the campaign finance law. The interest in getting a slate of candidates elected does not, however, allow the solicitation of contributions earmarked for a specific candidate. You state that "all monies raised as part of those efforts would be intended for the specific race under consideration." We understand this to mean that the RSC generally would use funds contributed for the specified race. Although we have not seen the solicitation letters that would be mailed to potential contributors, contributors responding to a "GOP for the AG" or "Keep the Treasurer Fund" would reasonably expect that funds contributed would be used for a specific candidate. There is only one Republican candidate for each office referenced. Even if there were more than one candidate for nomination in a particular race, however, this would not necessarily make a difference in our analysis because funds raised by the RSC would be used in connection with the general election.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided on the basis of representations in your letter. Please contact us if you have further questions.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

Michael J. Sullivan
Director